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90-Day Expiration Date:	To be determined

DATE: March 20, 2009

TO: Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Jennifer Molinsky, Principal Planner/ Zoning and Planning Coordinator

SUBJECT: PUBLIC HEARING
Petition #46-09, Director of Planning & Development recommending that Chapter 30 of the Revised Ordinances of Newton, Massachusetts, 2007, be amended by allowing the board of aldermen to grant a special permit for a Planned Multi-Use Business Development in any Mixed Use 1 District; by adding to Section 30-1, Definitions, a definition for Overlay Zone; by modifying certain minimum criteria and additional special permit criteria for a Planned Multi-Use Business Development in Section 30-15(s), Planned Multi-Use Business Development; by modifying certain density and dimensional requirements for Planned Multi-Use Business Development in Table A of Section 30-15(s), Planned Multi-Use Business Development; by renumbering, in Section 30-11(d), subparagraph (12) as (13) and adding a new subparagraph (12); by renumbering, in Section 30-13(b), subparagraph (16) as (17) and adding a new subparagraph (16); by adding to Section 30-13, Mixed Use Districts, a new subsection 30-13(h), special permits for Planned Multi-Use Business Development; and by adding to Section 30-19(l), Off-Street Loading Requirements, a new subsection 30-19(l)(4) and the table of off-street loading requirements new provisions for buildings containing a mix of commercial and residential uses in a Planned Multi-Use Business Development and included as part of this amendment as Exhibit A.

CC: Mayor David B. Cohen

RECOMMENDATION: *SEE RECOMMENDATIONS SECTION WITHIN*

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

Petition #46-09 seeks to amend the existing Planned Multi-Use Business Development ("PMBD") ordinance, which was adopted by the Board of Aldermen in December 2007. The amendments would create two overlay districts (one of which would include properties along Needham Street and the other would include properties along a limited portion of Route 9 (Boylston Street) - Chestnut Hill), in which the PMBD could be used if sites and projects meet certain minimum criteria. This petition also proposes alterations to the PMBD's minimum requirements, special permit criteria, density and dimensional requirements, and loading dock requirements. ***Please see Attachment "A" for the full text of the current PMBD Ordinance with proposed changes highlighted, as well as additional changes to other sections of the City's Zoning Ordinance included with this petition; and Attachment "B" for a summary of all proposed changes to the Zoning Ordinance.***

I. BACKGROUND

The Planned Multi-Use Business Development ("PMBD") Ordinance was first heard in March 2007 (docket item #66-07), and had a second public hearing in September 2007, after which the Board of Aldermen adopted it on December 17, 2007. As set out in ***Section 30-15(s)*** of the City's Zoning Ordinance, the PMBD Ordinance allows the Board of Aldermen to grant special permits for mixed use developments in Business 4 districts, on sites of a minimum of 10 acres that have frontage on a major arterial (as classified by the city), that comply with the PMBD's particular density and dimensional controls as well as other minimum criteria. Since the city's only major arterial is Route 9, the PMBD Ordinance is practically limited to sites on that corridor large enough to meet the PMBD's minimum requirements.

The PMBD Ordinance was created to allow more flexibility in the design and use of large sites in Business 4 districts than is otherwise possible under as-of-right or special permit development, in order to facilitate developments mixing residential and commercial uses. Section 30-15(s)(1) describes the purpose of PMBDs as allowing appropriate mixed-use development on commercial corridors that integrates with nearby neighborhoods, provides enhancements to infrastructure, and strengthens alternatives to single occupancy vehicles; the PMBD may also not be inconsistent with the city's Comprehensive Plan. Section 30-15(s) also sets out density and dimensional requirements specific to PMBD projects as well as additional special permit criteria and filing requirements that PMBDs must meet, in addition to the special permit criteria applicable to all special permits set out in Section 30-24(d).

Petition #46-09 now seeks to extend the PMBD option to qualifying sites in a Mixed Use 1 district with frontage on Needham Street. In terms of commercial square footage, the Needham Street corridor is the largest of the city's four regional business areas, yet has

significant development potential. The Planning Department believes that allowing the use of PMBDs on this street would help foster desirable mixed use development that would bring jobs, retail opportunities, and affordable housing to this critically important corridor and to the City of Newton. If developed under the PMBD Ordinance, projects would have to meet the additional filing requirements and special permit criteria set out in Section 30-15(s), particularly relating to adequacy of public facilities; mitigation of neighborhood impacts and integration with surroundings; enhanced open space; comprehensive signage programs; long-term public benefits in housing, public transportation, parking, and utilities; and excellence in design and place-making.

Currently, the Northland Investment Corporation is preparing to submit an application for redevelopment of its site at 260 Needham Street, as a mixed-use project. The existing Mixed Use 1 district density and dimensional controls offer no incentive for redevelopment of this site for a mixed use project (or frankly any site on Needham Street); therefore, the Planning Department has recommended certain amendments to the current PMBD Ordinance to facilitate such a project or projects along the Needham Street corridor.

The remainder of this memo discusses the petition's specific amendments in more detail. For more information about the PMBD Ordinance as adopted in 2007, please refer to the Planning Department's memos prepared for hearings on March 26, 2007 and September 24, 2007.

II. PROPOSED AMENDMENTS

Petition #46-09 makes a series of proposed amendments.' Among other changes, it would create overlay districts along Route 9 in Chestnut Hill and along Needham Street and limit the PMBD's use to those overlays, and it would alter some of the dimensional requirements for PMBDs. All proposed changes are described below.

Applicability of PMBD and Definition of Overlay Zone

The current PMBD Ordinance can be used on sites of 10 or more acres fronting on a major arterial in a Business 4 district (and meeting other minimum criteria set out in Sec. 30-15(s)(2)). Since the only major arterial in the city is Route 9/Boylston Street, the PMBD is limited to large sites on this corridor only.

The petition would amend the PMBD Ordinance to also allow its use on Needham Street. Needham Street is one of many "minor arterials" in the City's functional road classification system and, rather than modify the PMBD to allow its use on large sites along *any* major or minor arterial, the petition seeks to expand its use only to Needham Street (between Oak/Christina Streets and Winchester Street), and to further define its applicability along Route 9 to sites between Hammond Pond Parkway and Florence Street in Chestnut Hill. *(See Sec. 30-15(s), introduction; 30-15(s)(2)(a); and 30-15(s)(9) of petition.)* Additionally, the petition would amend the PMBD Ordinance so that eligible development parcels within these specific geographic areas may be zoned either Business 4 or Mixed Use 1 (which is currently the predominant zoning along Needham Street).

To achieve these changes, the petition would define the Needham Street and Route 9 areas where the PMBD may be used as Overlay Zones, and allow PMBDs to be used only on eligible sites, zoned Business 4 or Mixed Use 1, within these overlays:

Section 30-15(s)(2)(a) The Development Parcel shall be located in a Business 4 or Mixed Use 1 District; have frontage on a major or minor arterial, as classified by the City of Newton; and be located in one of the following Overlay Districts which are hereby established: a PMBD Overlay District A, bounded by Boylston Street, Florence Street, and Hammond Pond Parkway; or a PMBD Overlay District B, bounded by Oak Street and Christina Street on the south, the NY-NH-Hartford Railroad right-of-way on the west, Winchester Street and Curtis Street on the north, and encompassing all parcels zoned Mixed Use 1 as of March 23, 2009 on the east. Overlay Districts are specifically defined on PMBD Overlay District Maps on file with the City Engineer, City of Newton;

The petition would also define Overlay Zones as follows:

Section 30-1 Overlay Zone. A regulatory tool that creates a special zoning district, placed over an existing zoning district (“base”), which identifies special provisions in addition to those in the underlying base zone. (See Sec. 30-1 of petition.)

For consistency with the change proposed to Section 30-15(s)(2)(a) described above, the petition would also update the “Applicability” section of the PMBD Ordinance to ensure that properties in the Mixed Use 1 district and within the overlay districts would be eligible to use the PMBD provisions:

Section 30-15(s)(9) Applicability. Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 or Mixed Use 1 District, except as modified by the provisions of this section. Where provisions of this section conflict or are inconsistent with other provisions of the zoning ordinance, the provisions of this section shall govern. *(See Section 30-15(s)(9) of petition.)*

Section 30-15(s)(9) currently notes that applicable regulations of Business 4 or Mixed Use 1 districts, the “base zoning,” shall continue to apply to PMBDs except as they are modified by the PMBD Ordinance. Because uses are *not* modified by the PMBD Ordinance, it is important to note that a PMBD in a Business 4 district could have a different set of permissible uses than a PMBD in a Mixed Use 1 district. PMBDs in both districts would be governed by the same density and dimensional controls, however, because the PMBD Ordinance specifically regulates these.

Parking in Relation to Public Way

The petition proposes an addition to the minimum criteria for a PMBD regarding the location of off-street parking, underlined as follows:

30-15(s)(2)(e) No off-street parking shall be provided in the front setback of retail, office or commercial buildings in relation to a public way.

The phrase “in relation to a public way” ensures that, regardless of which way a building faces on the PMBD site, the “front” setback will be measured from a public way (street). For example, if a building faces the interior of a site, its front setback will still be measured from the public street, and no parking may occur in this area between the street and the building.

This requirement would apply to any public way, regardless of road classification, but not to private driveways.

Rear Driveway Access

Another change would allow developers of PMBDs to provide rear service driveway access to alleviate traffic congestion on the major or minor arterial. For example, on the Northland site on Needham Street the connection on Tower Road between Chestnut and Needham Streets might be completed to create a rear access driveway as a traffic mitigation measure. The petition’s proposed text is shown underlined below:

Sec. 30-15(s)(3)(b) *Mitigation of neighborhood impacts.* Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, rear service driveway access to reduce traffic on the major or minor arterial as classified by the City of Newton, or other roadway changes;

Table A” Dimensional Requirements

Petition #46-09 makes a number of proposed amendments to Section 30-15(s) “Table A,” the density and dimensional requirements for PMBDs. Currently, Table A distinguishes between buildings with “streetside facades,” meaning buildings that abut a public way; “interior developments” in the middle of a site, and “high rise” buildings, which must be set back at least 100 feet from the front or rear of the site and 50 feet from the side. The proposal would amend dimensional requirements pertaining to the entire development site and to these specific building types, as described in detail below:

Footnote (4): The proposed addition to footnote 4 would allow the Board of Aldermen to reduce a front setback in a PMBD *if* the developer were to grant an easement of frontage to the city or state for road widening or other traffic mitigation measures:

Footnote (4). The board of aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback.

The board of aldermen may grant a special permit to allow a further reduction in the minimum required front setback of a building if, as part of the project traffic mitigation plan, an owner deeds or grants an easement of frontage to the city or state in furtherance of required traffic mitigation.

Footnote (9): Proposed Footnote (9), a new footnote for Table A, would allow non-residential buildings that abut non-residential zoning districts to have smaller side and rear setbacks than are normally required in a PMBD. Currently, buildings that either have streetside facades or are sited on the interior of a lot (“interior development”) are required to have side and rear setbacks measuring the greater of 15 feet or half the building height. The amendment would allow minimum setbacks of five feet for non-residential buildings that abut non-residential districts. The setback requirement would not change for buildings abutting residential districts, or for residential buildings abutting non-residential districts. The proposed text is as follows:

Footnote (9): Side and/or rear setbacks of non-residential uses shall be a minimum 5 feet when such setback abuts a non-residential zoning district.

Footnote (10): Proposed Footnote (10) relates to minimum requirements for “beneficial open space” (in general, landscaped areas, playgrounds, plazas, walkways open to the general public, but not circulation paths, surface parking, or areas used by a single owner or tenant). The amendment would allow a decrease in the minimum beneficial open space for PMBDs where the average height of all interior and high-rise buildings is lower than the maximum allowed; essentially, when a development does not take advantage of the maximum number of stories or maximum height (in feet). Beneficial open space, which is currently required to be a minimum of 20% of a site, would be permitted to decrease by 1% for each increment of 10 feet below the maximum building height allowed, up to a minimum of 15% beneficial open space.

Footnote (10): For a Development Parcel where the average height of all the interior and high rise buildings is lower than the maximum height allowed for a building pursuant to this Table A, the minimum beneficial open space requirement shall be decreased by 1% for each increment of 10 feet below the maximum building height allowed, subject to a minimum of 15% beneficial open space.

Footnote (11): Proposed Footnote (11) allows the Board of Aldermen to grant a special permit to allow buildings that have both residential uses and streetside facades to be built up to 48 feet in height, provided that the height does not exceed the tallest streetside building within 1200 feet. Currently, streetside facades are limited in the PMBD ordinance to 36 feet. ***The maximum number of stories remains unchanged, with a maximum of four stories for a streetside building.*** The proposal states that building height is to be measured by the “contextual height” (already defined in the current PMBD ordinance) of the tallest building within 1200 feet as of the date the amendments would be adopted, so any buildings

constructed in the future could not be used to justify a taller building on a PMBD site.

Footnote (11): For any streetside building with a residential component, the board of aldermen may grant a special permit to allow the height of said building to be increased up to a maximum height of 48 feet, excluding customary rooftop elements, provided that the building height does not exceed the contextual height of the tallest existing streetside building within 1200 feet of the Development Parcel (as of date of ordinance amendment adoption).

Uses Allowed by Special Permit in PMBDs

The petition proposes to create a list of uses allowed by special permit only in PMBDs zoned Mixed Use 1. These uses include theatre, hall, or club; bowling alley; personal services; health club or like establishment; artist studio; and library, museum, or other cultural institution (possible uses under consideration by Northland Investment). Currently, these uses are not allowed (either as-of-right or by special permit) in Mixed Use 1 districts. This change would impact only locations zoned Mixed Use 1 in which a PMBD approach would be used. *(See Section 30-13(h) of petition.)*

Off-Street Loading Requirements

The petition proposes a new subsection in Sec. 30-19, the parking requirements of the City's Zoning Ordinance, which would set out new criteria for loading bays for buildings within PMBDs that have **both** residential and commercial uses; single-use buildings within PMBDs would still comply with current loading by requirements. The proposed loading bay requirements for mixed-use buildings are slightly less than what is currently required for retail, but the same as what is currently required for office buildings (though for large buildings, the petition would cap the total number of bays required by mixed-use buildings at four, while current zoning requires additional bays for each 150,000 sq. ft. over 300,000 sq. ft.; the current Zoning Ordinance has no requirements for loading bays in residential buildings.) The petition would also allow the Board of Aldermen to grant a special permit for a reduction in the number of loading bays. *(See Sec. 30-19(l)(4) and Exhibit A of petition.)* The table below provides a direct comparison of existing and proposed zoning.

Comparison of Existing Zoning (Sec. 30-19 Table) and Petition (proposed Sec. 30-19(l)(4) and Exhibit A)

Number of bays required for new or expanded uses, by gross floor area

	<5,000	5,000-50,000	50,000-100,000	100,001-150,000	151,000-300,000	Over 300,001*
Current Zoning						
<i>Retail trade, wholesale and storage, transportation terminal, manufacturing, public utility</i>	0	1	2	3	4	4+
<i>Business services; office building; hotel, motel and dormitory, research laboratory</i>	0	1	1	2	3	3+
<i>Recreation/Institution</i>	0	0	1	1	2	2+
Proposed amendment for buildings containing a mix of commercial and residential uses within a PMBD	0	0	1	2	3	4

* Section 30-19 of existing zoning states that, for each additional 150,000 square feet over 300,000, an additional loading bay is required. There is no such requirement for the proposed zoning.

III. RECOMMENDATIONS

The Planning Department prepared these amendments to the existing PMBD Ordinance to allow its use on appropriately sized sites (large) along Needham Street, and to modify some of the ordinance's dimensional and density requirements. The proposed changes to the PMBD's dimensional and density requirements would allow more flexibility in site planning without fundamentally changing the requirements or intent of the original PMBD Ordinance. The extension of the PMBD Ordinance to Needham Street, and the delineation of overlay zones for Needham Street and a portion of Route 9 in Chestnut Hill, is appropriate given the potential both areas have for mixed-use development. Indeed, the *Newton Comprehensive Plan* (adopted in 2007) states:

Intensive, well planned corridor development is anticipated and welcomed on Needham Street and Chestnut Hill, as long as it is integrated with and helps produce transport enhancements sufficient to make the net impact of that development a positive one. (Page 3-6)

The PMBD Ordinance contains additional special permit criteria to ensure adequacy of transportation and other public facilities, integration with surroundings and mitigation of neighborhood impacts, improved access and open space, comprehensive signage, high quality design, and long-term enhancements for the city.

For parcels on Needham Street fitting the criteria for a PMBD development, the main advantages of the PMBD over current special permit or by-right development include: additional uses (allowed by special permit), additional FAR, and additional height on certain buildings (depending on their location on the site). For parcels in Chestnut Hill the PMBD amendments should not significantly alter the existing PMBD requirements.

Recommendation: The Planning Department recommends adoption of the amendments to the Planned Mixed-Use Business Development Ordinance as proposed in petition #46-09.

Petition #46-09
March 23, 2009 - Hearing Draft

That the Revised Zoning Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended as follows:

1. By amending the provisions of Section 30-15, Density/dimensional requirements as follows:

Section 30-15(s) *Planned Multi-Use Business Development ("PMBD")*

In any Business 4 or Mixed Use 1 District, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23, and may grant a special permit in accordance with the procedures provided in section 30-24, for the applicable density and dimensional controls set out in Table A of this section subject to the criteria for a Planned Multi-Use Business Development and further subject to the criteria and conditions set out below.

- (1) *Purpose:* A Planned Multi-Use Business Development is one that allows development appropriate to the site and its surroundings, provides enhancements to infrastructure, integrates with and protects nearby neighborhoods, provides a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, is compatible with the city's long-term goal of strengthening alternatives to single occupancy automobile use, and is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.
- (2) *Minimum Criteria for Planned Multi-Use Business Developments.* In order to be eligible for any approval under this section, a PMBD must meet the following threshold criteria:
 - (a) The Development Parcel shall be located in a Business 4 or Mixed Use 1 District; have frontage on a major or minor arterial, as classified by the City of Newton; and be located in one of the following Overlay Districts which are hereby established: a PMBD Overlay District A, bounded by Boylston Street, Florence Street, and Hammond Pond Parkway; or a PMBD Overlay District B, bounded by Oak Street and Christina Street on the south, the NY-NH-Hartford Railroad right-of-way on the west, Winchester Street and Curtis Street on the north, and encompassing all parcels zoned Mixed Use 1 as of March 23, 2009 on the east. Overlay Districts are specifically defined on PMBD Overlay District Maps on file with the Engineering Division, City of Newton;

- (b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this section, rather than to those of section 30-15 Table 3;
 - (c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in subsection 30-24(f);
 - (d) If the PMBD's mix of commercial and residential uses share parking facilities, the provisions of subsection 30-19(d) shall apply, except that in no event shall the required parking for residential units be less than 1.25 spaces per dwelling unit; and
 - (e) No off-street parking shall be provided in the front setback of retail, office or commercial buildings in relation to a public way.
- (3) *Additional Special Permit Criteria for a Planned Multi-Use Business Development.* In order to make the findings set forth in subsection 30-24(d), and in addition to those criteria set forth in subsection 30-23(c)(2) and in subsection 30-24(d), the board of aldermen shall not approve a PMBD application for a special permit unless it also finds, in its judgment, that the application meets all of the following criteria:
- (a) *Adequacy of public facilities.* Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations; determination of adequacy shall include use of the traffic analysis required by subsection (10)(f) of this section.
 - (b) *Mitigation of neighborhood impacts.* Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, rear service driveway access to reduce traffic on the major or minor arterial as classified by the City of Newton, or other roadway changes;
 - (c) *Housing, public transportation and parking improvements, and utility infrastructure enhancements.* The PMBD offers long-term public benefits to the city and nearby areas such as:
 - 1) Improved access and enhancements to public transportation;
 - 2) Enhancements to parking, traffic, and roadways;

- 3) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
 - 4) Public safety improvements;
 - 5) On-site affordable housing opportunities except where allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and
 - 6) Water and sewer infrastructure enhancements.
- (d) *Compatibility and integration with its surroundings.* The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD is appropriately integrated with these neighborhoods in terms of building height, streetscape character, and overall PMBD design, while providing appropriate setbacks, buffering and/or screening from nearby properties, especially residential ones, as well as assurance of appropriate street- or ground-level commercial uses. The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD in relation to its neighbors;
- (e) *Not inconsistent with applicable local plans or general laws.* The PMBD is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;
- (f) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths, which shall be determined by the board of aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;
- (g) *Enhanced open space.* Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any. In addition, the PMBD must satisfy the open space requirement in Table A;
- (h) *Excellence in place-making.* The PMBD provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the PMBD and its surroundings;

- (i) *Comprehensive signage program.* All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the board of aldermen, which shall control for all purposes and shall not be inconsistent with the architectural quality of the PMBD or character of the streetscape;
- (j) *Pedestrian scale.* The PMBD provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel;
- (k) *Public Space.* The PMBD creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the PMBD, to other commercial activity, and to each other;
- (l) *Sustainable Design.* The PMBD will at least meet the energy and sustainability provisions of zoning subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h);
- (m) *Pedestrian and Neighborhood Considerations.* If the PMBD project proposes any measures such as the measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact:
 - 1) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
 - 2) Removal of pedestrian crossings, bicycle lanes, or roadway shoulder;
 - 3) Traffic signal additions or alterations; and
 - 4) Relocation or alterations to public transport access points;
- (4) *Lots.* In the application of the requirements of this section to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this

section by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection (5) below.

- (5) *Organization of Owners.* Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the city or its representatives. Such organization shall serve as the liaison between the city and any lot owner, lessee, or licensee within the PMBD which may be in violation of the city's ordinance and shall be the primary contact for the city in connection with any dispute regarding violations of this section and, in addition to any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this section. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.
- (6) *Phasing.* Any development within a Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD shall be as set forth in the special permit.
- (7) *Post-Construction Traffic Study.* A PMBD special permit granted shall provide for monitoring to determine consistency between the projected and actually experienced number of daily and hourly vehicle trips to and from the site and their distribution among points of access to the PMBD. The special permit shall require a bond or other security satisfactory to the city traffic engineer and director of planning and development, in an amount approved by the board of aldermen in acting on the special permit, to secure performance as specified below:
- (a) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy, and shall continue periodically over the following twelve months. Measurements shall be made at all driveway accesses to the PMBD.
 - (b) The experienced actual number of weekday and Saturday peak hour and weekday daily vehicle trips to and from the PMBD at each driveway into the PMBD shall be measured by a traffic engineering firm retained by the city and paid for the applicant or successor in interest.
 - (c) If the actually experienced total number of vehicle trips to and from the PMBD measured per subsection (7)(b) above summed over all points of access exceeds the weekday evening Adjusted Volume projected per

subsection (10)(f)iii by more than ten percent (10%), mitigation measures are required. Within six months of notification to do so, the then owner of the PMBD site shall begin mitigation measures in order to reduce the trip generation to one hundred ten percent (110%) or less of the Adjusted Volume, such reduction to be achieved within twelve months after the mitigation is begun. Prior to implementation, any mitigation efforts must be approved by the city traffic engineer and the director of planning and development.

Upon failure by the owner to achieve the required reduction within one year after notification, the bond or other security cited above may be forfeited and proceeds used by the city for traffic mitigation.

(8) *Modifications.* Any material modification to a PMBD shall require an amendment to the site plan or special permit as approved by the board of aldermen in accordance with sections 30-23 or 30-24. In addition to any other material modifications which might require an amendment, the following shall be considered material modifications:

- (a) A change of use to a use not approved in the special permit; or change to an approved use within the PMBD if the total Gross Floor Area within the PMBD devoted to such use would be increased by more than five percent (5%) in the aggregate;
- (b) A change of use that results in a net increase in required parking for the PMBD (pursuant to section 30-19);
- (c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study;
- (d) Except as provided above, any reduction in beneficial open space; and
- (e) Modification governed by any condition identified by the board of aldermen in the special permit as not subject to modification without additional approval.

(9) *Applicability.* Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 or Mixed Use 1 District, except as modified by the provisions of this section. Where provisions of this section conflict or are inconsistent with other provisions of the zoning ordinance, the provisions of this section shall govern.

(10) *Additional Filing Requirements for PMBDs.* In addition to the provisions of sections 30-23 and 30-24, applicants for a grant of special permit for a PMBD shall submit:

- (a) Scaled massing model or 3D computer model consistent with section 30-24(b);
- (b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section;
- (c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (d) Site plans showing any “by-right” or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit application under this section;
- (e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus;
- (f) A Roadway and Transportation Plan reflecting the “EOEA Guidelines for EIR/EIS Traffic Impact Assessment” with further attention to public transportation and exceptions, subject to review by the city traffic engineer, director of planning and development, and peer review consultants. The Plan should include the following:
 - i. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles;

ii. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;

iii. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the PMBD, documenting:

- a) the projected Base Volume of trips to and from the PMBD based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the city traffic engineer and director of planning and development;
- b) the projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for “pass-by” trips, and noting how those reductions compare with the PMBD guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;
- c) the means of making mitigations if it is found pursuant to the monitoring under subsection (7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more, and;
- d) the projected trip reduction adjustment based on “pass-by” trips for use in projecting impacts on street traffic volumes.

iv. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the PMBD may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues;

v. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and

- vi. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service;
 - (g) Proposed phasing schedule, including infrastructure improvements; and
 - (h) Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon.
- (11) *Electronic Submission and Posting of Application Materials.* Applicants must submit in electronic form all documents required under subsection (10) of this section and sections 30-23 and 30-24 and any supplemental reports memoranda, presentations, or other communications submitted by the applicant or its representatives to the board of aldermen and pertaining to the special permit application unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city web site within a reasonable time after receipt.

Table A.

DENSITY AND DIMENSIONAL REQUIREMENTS FOR PLANNED MIXED BUSINESS DEVELOPMENT

The following rather than the provisions of Table 3 in section 30-15 shall apply to development under a PMBD special permit.

As noted at subsection 30-15(4) *Lots*, these requirements apply to the Development Parcel as a whole rather than to any individual lots within it.

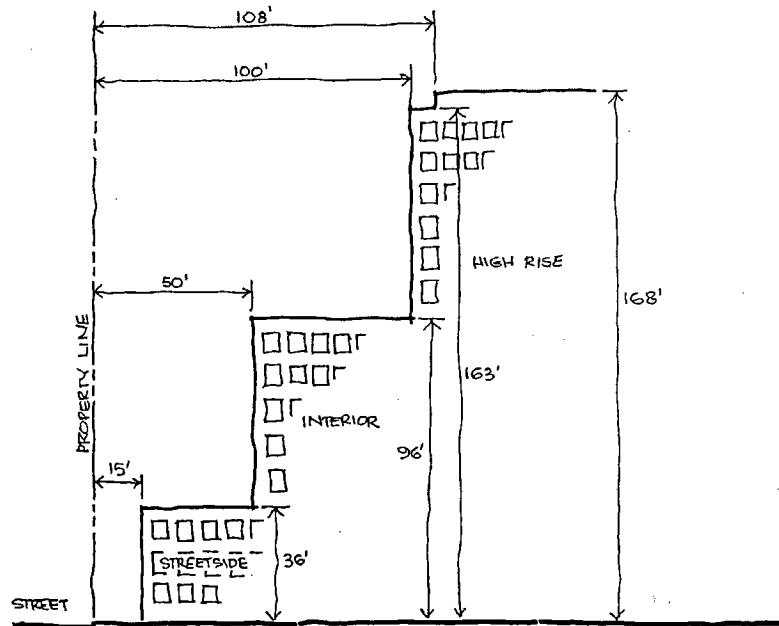
Area, frontage, and bulk	All development
Minimum lot area	10 acres
Minimum lot frontage	100 ft.
Max. total floor area ratio	3.0
Min. lot area per dwelling unit	1,200 sq. ft.
Maximum lot coverage	n/a
Min. beneficial open space	20% (10)

Height and setbacks (8)	Streetside facade	Interior development	High rise development
Height (feet)	36 ft. (11)	96 ft.	96 ft. (2), (3)
Height (stories)	4	8	8 (1)
Front setback (7)	Lesser of 15 ft. or 1/2 building height (4)	Greater of 50 ft. or 1/2 building height	100 ft.
Side setback (7)	Greater of 15 ft. or 1/2 building height (5), (9)		50 ft. (6)
Rear setback (7)			100 ft. (6)

NOTES

- (1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the board of aldermen and subject to such height and setback limits as established in footnotes 2 and 3.
- (2) The board of aldermen may grant a special permit to allow building height to be increased up to a maximum of 168 ft., excluding customary rooftop elements, provided the building is placed a minimum of 100 ft. from the front and rear lot lines and provided that the building does not exceed one (1) foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.
- (3) Any increase in building height requested pursuant to footnote 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 1,200 ft. of the Development Parcel as of December 17, 2007.
- (4) The board of aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback. ~~The board of aldermen may grant a special permit to allow a further reduction in the minimum required front setback of a building if, as part of the project traffic mitigation plan, an owner deeds or grants an easement of frontage to the city or state in furtherance of required traffic mitigation.~~
- (5) Side and/or rear setbacks shall be a minimum of 20 feet or 1/2 building height if larger when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 ft. when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (7) The front, side, and rear setback requirements for parking facility shall not be less than five (5) feet, or shall not be less than fifteen (15) feet when such setback abuts a Single Residence District or Multi-Residence or Public Use District.
- (8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining lower building element at least twenty (20) feet, and (c) for which there is a change in height of at least one story. Setbacks for non-building structures shall be determined by the board of aldermen.
- (9) ~~Side and/or rear setbacks of non-residential uses shall be a minimum 5 feet when such setback abuts a non-residential zoning district.~~

- (10) For a Development Parcel where the average height of all of the interior and high rise buildings is lower than the maximum height allowed for a building pursuant to this Table A, the minimum beneficial open space requirement shall be decreased by 1% for each increment of 10 feet below the maximum building height allowed, subject to a minimum of 15% beneficial open space.
- (11) For any streetside building with a residential component, the board of aldermen may grant a special permit to allow the height of said building to be increased up to a maximum height of 48 feet, excluding customary rooftop elements, provided that the building height does not exceed the contextual height of the tallest existing streetside building within 1200 feet of the Development Parcel (as of date of ordinance amendment adoption).



2. By adding to Section 30-1 Definitions, the following definition:

Overlay Zone: A regulatory tool that creates a special zoning district, placed over an existing zoning district ("base"), which identifies special provisions in addition to those in the underlying base zone.

3. By renumbering, in Section 30-13(b), subparagraph (16) as (17) and adding the following as new subparagraph (16):

- (16) In Mixed Use 1 Districts, a Planned Multi-Use Business Development, in accordance with the provisions of section 30-15(s);

4. By adding to Section 30-13, Mixed Use Districts, the following subsection 30-13(h), Special Permits for Planned Multi-Use Business Developments:

(h) Special Permits for Planned Multi-Use Business Developments. For all Development Parcels, in addition to those allowed uses set forth in Section 30-13(a) and those uses allowed by special permit pursuant to Section 30-13(b), the Board of Aldermen may grant a special permit in accordance with the procedures in Section 30-24, subject to the density and dimensional controls set forth in Section 30-15(s) and the parking requirements set forth in Section 30-19 to use land, buildings and structures for one or more of the following purposes:

- (1) Theatre, hall, or club;
- (2) Bowling alley;
- (3) Personal Services;
- (4) Health Club or like establishment;
- (4) Artist studio; and
- (5) Library, museum, or other cultural institution.

5. By adding to Section 30-19(l), Off-Street Loading Requirement, the following subsection 30-19(l)(4) and the Table of Off-Street Loading for Buildings that Contain a Mix of Commercial and Residential Uses attached hereto as Exhibit A:

For any Planned Multi-Use Business Development, the Table of Off-Street Loading Requirements at Section 30-19(l)(2)(a) shall not apply to buildings that contain a mix of commercial and residential uses but in lieu thereof the Table of Off-Street Loading Requirements for Buildings that Contain a Mix of Commercial and Residential Uses, Exhibit A, shall apply. The required dimensions and location of loading bays for buildings that contain a mix of commercial and residential uses shall be determined by the board of aldermen in the special permit along with a finding that the approved site plan will allow loading in a safe and efficient manner through interior driveways or parking facilities.

Exhibit A

TABLE OF OFF-STREET LOADING REQUIREMENTS FOR BUILDINGS THAT CONTAIN A MIX OF COMMERCIAL AND RESIDENTIAL USES

Number of bays required for new and expanded buildings that contain a mix of commercial and residential uses by commercial gross floor area of structure or land use (in square feet) (1)

Use Type	Under 50,000	50,001- 100,000	100,101- 150,000	150,001- 300,000	Over 300,001
Mixed Commercial and Residential Use Buildings	0	1	2	3	4

NOTES

- (1) The board of aldermen may grant a special permit to reduce the number of required loading bays based on the special permit criteria of §30-15(s).

Petition #46-09
March 23, 2009 - Summary of Changes

That the Revised Zoning Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended as follows:

1. Amend Section 30-15(s) Planned Multi-Use Business Development by:

- A. Adding to the first sentence of the section, after the words “Business 4,” the following language:**

“or Mixed Use 1”

- B. Adding to the first sentence of Section 30-15(s)(2) *Minimum Criteria for Planned Multi-Use Business Developments*, part (a), after the words “Business 4” and before the word “District,” the following language:**

“or Mixed Use 1”

and following the word “District,” the language:

“have frontage on a major or minor arterial, as classified by the City of Newton; and be located in one of the following Overlay Districts which are hereby established: a PMBD Overlay District A, bounded by Boylston Street, Florence Street, and Hammond Pond Parkway; or a PMBD Overlay District B, bounded by Oak Street and Christina Street on the south, the NY-NH-Hartford Railroad right-of-way on the west, Winchester Street and Curtis Street on the north, and encompassing all parcels zoned Mixed Use 1 as of March 23, 2009 on the east. Overlay Districts are specifically defined on PMBD Overlay District Maps on file with the Engineering Division, City of Newton;”

- C. Adding to the first sentence of Section 30-15(s)(2) *Minimum Criteria for Planned Multi-Use Business Developments*, part (e), after the words “commercial buildings,” the following language:**

“in relation to a public way.”

- D. Adding to the last sentence of Section 30-15(s)(3)(b) *Mitigation of neighborhood impacts*, after the words “traffic calming,” the following language:**

“rear service driveway access to reduce traffic on the major or minor arterial as classified by the City of Newton,”

- E. Adding to the first sentence of Section 30-15(9) *Applicability*, after the words “Business 4,” the following language:**

“or Mixed Use 1 District,”

2. Amend Section 30-15(s) Planned Multi-Use Business Development, Table A by:

- A. Adding a reference to Foonote (4) (to be written as “(4)”) to the Table labeled “Height and setbacks”, after the words “Lesser of 15 ft. or ½ building height” in the row labeled “Front setback” and the column labeled “Streetside façade.”**

- B. Adding to Footnote (4), after the sentence ending with the words “front setback,” the following sentence:**

“The board of aldermen may grant a special permit to allow a further reduction in the minimum required front setback of a building if, as part of the project traffic mitigation plan, an owner deeds or grants an easement of frontage to the city or state in furtherance of required traffic mitigation.”

- C. Adding a reference to Foonote (9) (to be written as “, (9)”) to the Table labeled “Height and setbacks”, after the words “Greater of 15 ft. or ½ building height (5)” in the rows labeled “Side setback” and “Rear setback” and the column labeled “Streetside façade.”**

- D. Adding a new Footnote (9) with the following language:**

“(9) Side and/or rear setbacks of non-residential uses shall be a minimum 5 feet when such setback abuts a non-residential zoning district.”

- E. Adding a reference to Foonote (10) (to be written as “(10)”) to the Table labeled “Area, frontage, and bulk,” after the figure “20%” in the final row labeled “Min. beneficial open space” and the column labeled “All development.”**

- F. Adding a new Footnote (10) with the following language:**

“(10) For a Development Parcel where the average height of all of the interior and high rise buildings is lower than the maximum height allowed for a building pursuant to this Table A, the minimum beneficial open space requirement shall be decreased by 1% for each increment of 10 feet below the maximum building height allowed, subject to a minimum of 15% beneficial open space.”

- G. Adding a reference to Foonote (11) (to be written as “(11)”) to the Table labeled “Height and setbacks”, after the figure “36 ft.” in the first row labeled “Height (feet)” and the column labeled “Streetside façade.”**

H. Adding a new Footnote (11) with the following language:

“(11) For any streetside building with a residential component, the board of aldermen may grant a special permit to allow the height of said building to be increased up to a maximum height of 48 feet, excluding customary rooftop elements, provided that the building height does not exceed the contextual height of the tallest existing streetside building within 1200 feet of the Development Parcel (as of date of ordinance amendment adoption).”

3. Amend Section 30-1 Definitions by adding the following definition:

“*Overlay Zone*: A regulatory tool that creates a special zoning district, placed over an existing zoning district (“base”), which identifies special provisions in addition to those in the underlying base zone.”

4. Amend Section 30-13(b) *Special Permits in Mixed Use 1 Districts*, by renumbering subparagraph (16) as (17) and adding the following new subparagraph (16):

“(16) In Mixed Use 1 Districts, a Planned Multi-Use Business Development, in accordance with the provisions of section 30-15(s);”

5. Amend Section 30-13, Mixed Use Districts, by adding the following subsection 30-13(h), Special Permits for Planned Multi-Use Business Developments:

“(h) Special Permits for Planned Multi-Use Business Developments. For all Development Parcels, in addition to those allowed uses set forth in Section 30-13(a) and those uses allowed by special permit pursuant to Section 30-13(b), the Board of Aldermen may grant a special permit in accordance with the procedures in Section 30-24, subject to the density and dimensional controls set forth in Section 30-15(s) and the parking requirements set forth in Section 30-19 to use land, buildings and structures for one or more of the following purposes:

- (1) Theatre, hall, or club;
- (2) Bowling alley;
- (3) Personal Services;
- (4) Health Club or like establishment;
- (4) Artist studio; and
- (5) Library, museum, or other cultural institution.”

6. Amend Section 30-19(l) Off-Street Loading Requirement by adding the following subsection 30-19(l)(4):

“For any Planned Multi-Use Business Development, the Table of Off-Street Loading Requirements at Section 30-19(l)(2)(a) shall not apply to buildings that contain a mix of commercial and residential uses but in lieu thereof the Table of Off-Street Loading Requirements for Buildings that Contain a Mix of Commercial and Residential Uses, Exhibit A, shall apply. The required dimensions and location of loading bays for buildings that contain a mix of commercial and residential uses shall be determined by the board of aldermen in the special permit along with a finding that the approved site plan will allow loading in a safe and efficient manner through interior driveways or parking facilities.”

and by adding the following Table of Off-Street Loading for Buildings that Contain a Mix of Commercial and Residential Uses:

TABLE OF OFF-STREET LOADING REQUIREMENTS FOR BUILDINGS THAT CONTAIN A MIX OF COMMERCIAL AND RESIDENTIAL USES

Number of bays required for new and expanded buildings that contain a mix of commercial and residential uses by commercial gross floor area of structure or land use (in square feet) (1)

Use Type	Under 50,000	50,001- 100,000	100,101- 150,000	150,001- 300,000	Over 300,001
Mixed Commercial and Residential Use Buildings	0	1	2	3	4

NOTES

- (1) The board of aldermen may grant a special permit to reduce the number of required loading bays based on the special permit criteria of §30-15(s).